



Obligation to Bargain

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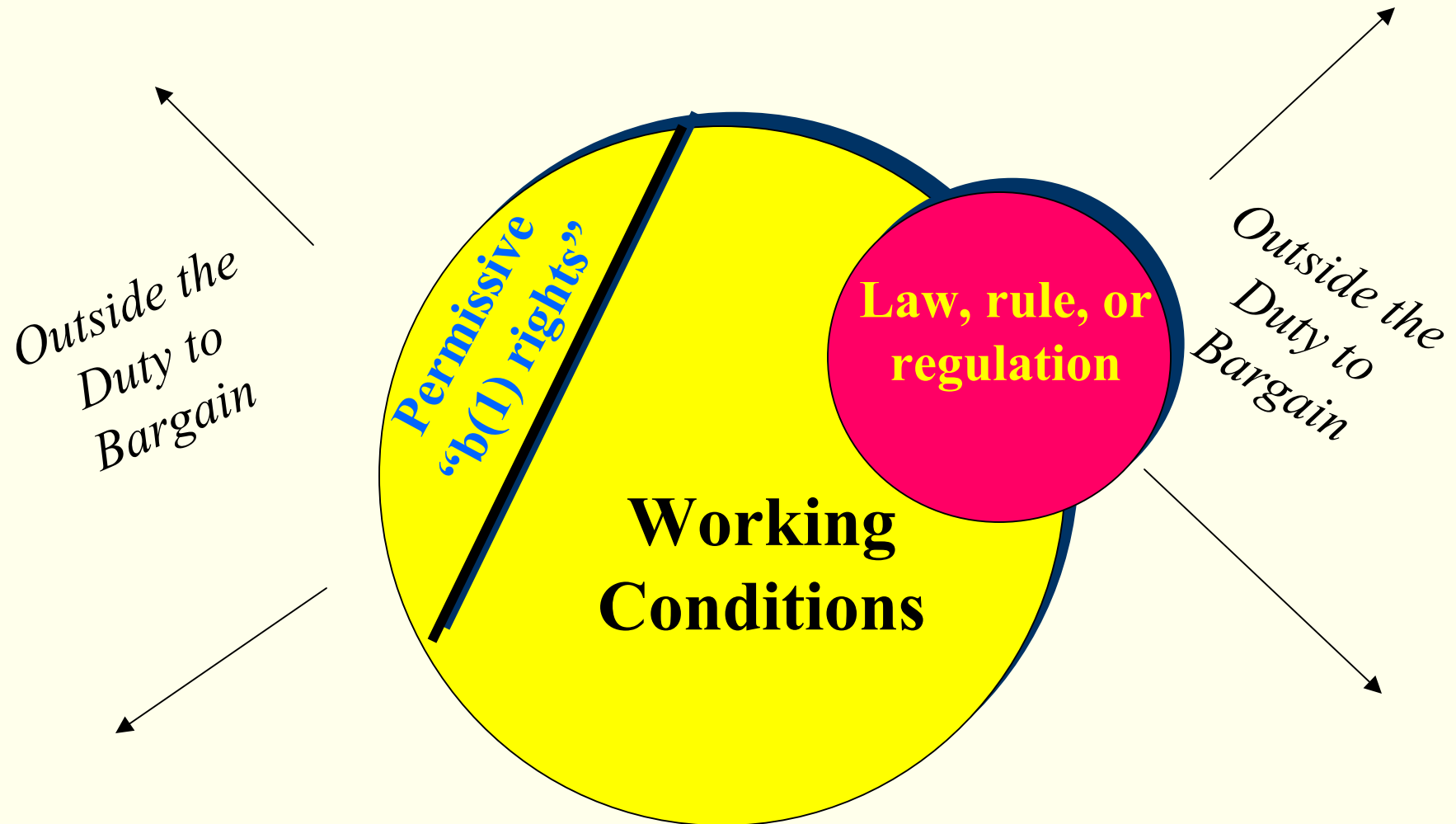
*HR Worldwide –
Leading the Charge*

- The Scope of Bargaining
- Negotiability Procedures
- Consequences
- Advice

Scope of Bargaining



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Mandatory Matters



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- **5 U.S.C. § 7102 provides employees the right to:**
 - Form a union and
 - Negotiate on conditions of employment (COE)
- **5 U.S.C. § 7103(a)(14) defines conditions of employment to include:**
 - Personnel policies
 - Personnel practices
 - Working Conditions
- **5 U.S.C. § 7106(b)(2) & (3) requires management to negotiate:**
 - Procedures and appropriate arrangements

Permissive Matters



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- **5 U.S.C. § 7106(b)(1) states that management may elect to negotiate:**
 - Numbers, types, grades of employees or positions assigned to organizational subdivision, work project, tour of duty
 - Technology, methods, means of performing bargaining unit work

Prohibited Matters



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- **5 U.S.C. § 7117(a)(1)**
 - Subjects of a law or Government-wide regulation not bargainable
 - Subjects of an agency regulation not bargainable absent FLRA finding of no compelling need
- **5 U.S.C. § 7106(a): Management Rights**

Management Rights



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- **(a)(1) – determine mission, budget, organization, number of employees, internal security practices**
- **(a)(2)(A) – hire, assign, layoff, suspend, remove, reduce in grade or pay, discipline**
- **(a)(2)(B) – assign work, contract out, determine personnel**
- **(a)(2)(C) - make selections for appointments**
- **(a)(2)(D) – carry out agency mission in emergencies**

Procedures and Appropriate Arrangements



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- **5 U.S.C. § 7106**
 - **(b)(2) procedures must be bargained:**
 - Unless they prevent acting at all
 - Unless they prescribe criteria for making decisions that directly interfere
 - **(b)(3) arrangements must be bargained:**
 - Unless it is not intended to ameliorate the effect of a management right
 - Unless it excessively interferes with a management right

Negotiability Procedures



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- **Determine meaning of the proposal**
- **Research the case law**
 - **FLRA Decisions**
 - **Broida**
 - **Web-based research services**
- **Call or e-mail FAS**
 - **703-696-6301 x 3**
 - **labor.relations@cpms.osd.mil**

Negotiability Procedures [2]



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- **Clear allegation of non-negotiability with FAS**
- **Provide written memo or letter to union**
- **Participate in post-petition-conference**
- **Seek agreement on alternative language**
- **Coordinate on statement of position**

Consequences



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- **5 U.S.C. § 7116(a)(5) refusal to negotiate in good faith (Constitutes 70 percent of all ULPs)**
- **5 U.S.C. § 7118 remedies**
 - Cease and desist
 - Status quo ante remedy
 - Retroactive application of bargaining
 - Post notice

Meeting Bargaining Obligations



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- **Sensitize/train supervisors**
 - Obligations
 - Consequences
- **Establish communication**
 - Supervisors
 - Reminders
 - New case law (FASTRACK)
 - P.O.C. on bargaining questions
 - Unions
- **Advise early where possible**
- **Made amends quickly**
- **When in doubt, talk it out**